

2007

The State of Utah v. Cindy Williams : Brief of Appellant

Utah Court of Appeals

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Weber County Attorney; Attorney for Plaintiff/Appellee.

Dee W. Smith; The Public Defender Association of Weber County; Attorney for Defendant/Appellant.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff/Appellee, :
vs. :
CINDY WILLIAMS, : Appellate Court No. 20070286
Defendant/Appellant. :

BRIEF OF APPELLANT

THIS APPEAL IS FROM A PLEA AND SUBSEQUENT SENTENCING TO POSSESSION OF A CONTROLLED SUBSTANCE WITHIN 1000 FEET OF A DRUG FREE ZONE, A CLASS A MISDEMEANOR; AND FALSE PERSONAL INFORMATION TO A POLICE OFFICE, A CLASS C MISDEMEANOR AND WAS SENTENCED A TERM OF 365 DAYS PLUS 90 DAYS IN JAIL, IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR WEBER COUNTY, STATE OF UTAH, THE HONORABLE PARLEY R. BALDWIN PRESIDING.

DEFENDANT IS CURRENTLY RESIDING AT THE UTAH STATE PRISON.

WEBER COUNTY ATTORNEY
2380 Washington Boulevard, 2nd Floor
Ogden, UT 84401

Telephone: (801) 399-8377

Attorney for Plaintiff/Appellee

DEE W. SMITH (8688)
THE PUBLIC DEFENDER
ASSOCIATION OF WEBER
COUNTY
2550 Washington Boulevard, Ste 300
Ogden, Utah 84401

Telephone: (801) 399-4191

Attorney for Defendant/Appellant

IN THE UTAH COURT OF APPEALS

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CINDY WILLIAMS, : Appellate Court No. 20070286
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Attorney for Defendant/Appellant

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
vs.	:	
CINDY WILLIAMS,	:	Appellate Court No. 20070286
Defendant/Appellant.	:	

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a conviction based upon a plea of guilty by the Defendant to the charge of Possession of a Controlled Substance within 1000 feet of a Drug Free Zone, a class A misdemeanor and False Personal Information to a Police Officer, a class C misdemeanor. The plea of guilty was taken before the Honorable Parley R. Baldwin on the 19th day of March 2007. Jurisdiction for the Appeal is conferred upon the Utah Court of Appeals pursuant to U.C.A. §78-2a-3(2)(e).

STATEMENT OF ISSUES ON APPEAL AND STANDARD OF REVIEW

POINT I

DID THE TRIAL COURT ERR IN DENYING THE DEFENDANT’S MOTION TO WITHDRAW HER GUILTY PLEA?

PRESERVATION IN THE TRIAL COURT: *This issue was preserved for appeal* by the timely filing of a motion to withdraw her plea. (R. 029).

STANDARD OF REVIEW: The Court reviews “a trial court’s denial of a motion to withdraw a guilty plea under an abuse-of-discretion standard.” *State v. Blair*, 868 P.2d 802, 805 (Utah 1993). The Court applies “the clearly erroneous standard for the trial court’s findings of fact made in conjunction with that decision.” *State v. Benvenuto*, 983 P.2d 556, 558 (Utah 1999). “However, the ultimate question of whether the trial court strictly complied with constitutional and procedural requirements for entry of a guilty plea is a question of law that is reviewed for correctness.” *State v. Benvenuto*, 983 P.2d 556, 558 (Utah 1999) (See also *State v. Thurman*, 911 P.2d 371, 372 (Utah 1996)).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

UTAH CODE ANNOTATED

Section 58-37-8(2) Prohibited Acts

(a) It is unlawful:

- (i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of his professional practice, or as otherwise authorized by this chapter;
 - (ii) for any owner, tenant, licensee, or person in control of any building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or
 - (iii) for any person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.
- (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:
 - (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;
 - (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree felony; or
 - (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A misdemeanor.
- (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in this Subsection (2).
- (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one ounce of marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty of a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a third degree felony.
- (e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by any correctional facility as defined in Section **64-13-1** or any public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:

- (i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:
 - (A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently; and
 - (B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and
- (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.
- (f) Any person convicted of violating Subsection (2)(a)(ii) or (2)(a)(iii) is:
 - (i) on a first conviction, guilty of a class B misdemeanor;
 - (ii) on a second conviction, guilty of a class A misdemeanor; and
 - (iii) on a third or subsequent conviction, guilty of a third degree felony.
- (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not amounting to a violation of Section **76-5-207**:
 - (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in his body any measurable amount of a controlled substance; and
 - (ii) operates a motor vehicle as defined in Section **76-5-207** in a negligent manner, causing serious bodily injury as defined in Section **76-1-601** or the death of another.
- (h) A person who violates Subsection (2)(g) by having in his body:
 - (i) a controlled substance classified under Schedule I, other than those described in Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second degree felony;
 - (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection **58-37-4(2)(a)(iii)(S)** or (AA) is guilty of a third degree felony; or
 - (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class A misdemeanor.

Section 76-8-507 False Personal Information to Peace Officer.

- (1) A person commits a class C misdemeanor if, with intent of misleading a peace officer as to the person's identity, birth date, or place of residence, the

person knowingly gives a false name, birth date, or address to a peace officer in the lawful discharge of the peace officer's official duties.

(2) A person commits a class A misdemeanor if, with the intent of leading a peace officer to believe that the person is another actual person, he gives the name, birth date, or address of another person to a peace officer acting in the lawful discharge of the peace officer's official duties.

78-2a-3. Court of Appeals jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

Utah Rules of Criminal Procedure; Rule 11(e)

e) The court may refuse to accept a plea of guilty, no contest or guilty and mentally ill, and may not accept the plea until the court has found:

- (1) If the defendant is not represented by counsel, he or she has knowingly waived the right to counsel and does not desire counsel;
- (2) the plea is voluntarily made;
- (3) the defendant knows of the right to the presumption of innocence, the right against compulsory self-incrimination, the right to a speedy public trial before an impartial jury, the right to confront and cross-examine in open court the prosecution witnesses, the right to compel the attendance of defense witnesses, and that by entering the plea, these rights are waived;
- (4) (A) the defendant understands the nature and elements of the offense to which the plea is entered, that upon trial the prosecution would have the burden of proving each of those

elements beyond a reasonable doubt, and that the plea is an admission of all those elements;

(B) there is a factual basis for the plea. A factual basis is sufficient if it establishes that the charged crime was actually committed by the defendant or, if the defendant refuses or is otherwise unable to admit culpability, that the prosecution has sufficient evidence to establish a substantial risk of conviction;

- (5) the defendant knows the minimum and maximum sentence, and if applicable, the minimum mandatory nature of the minimum sentence, that may be imposed for each offense to which a plea is entered, including the possibility of the imposition of consecutive sentences;
- (6) if the tendered plea is a result of a prior plea discussion and plea agreement, and if so, what agreement has been reached;
- (7) the defendant has been advised of the time limits for filing any motion to withdraw the plea; and
- (8) the defendant has been advised that the right of appeal is limited.

These findings may be based on questioning of the defendant on the record or, if used, a written statement reciting these factors after the court has established that the defendant has read, understood, and acknowledged the contents of the statement. If the defendant cannot understand the English language, it will be sufficient that the statement has been read or translated to the defendant.

Unless specifically required by statute or rule, a court is not required to inquire into or advise concerning any collateral consequences of a plea.

STATEMENT OF THE CASE

The Defendant was originally charged in an information filed October 25, 2006, with the offense of Possession of a Controlled Substance within 1000 feet

of a Drug Free Zone, a class A misdemeanor in violation of U.C.A. §58-37-8(2) and False Personal Information to a Police Officer a class C misdemeanor in violation of U.C.A. §76-8-507 (R. 01-2). On November 16, 2006, the Defendant made an appearance before the Honorable Judge Parley R. Baldwin and entered a plea of guilty to the charges (R. 57/2-5). In exchange for the guilty plea, the State agreed to remain silent at sentencing. (R. 57/2)

Prior to sentencing the Defendant filed a motion to withdraw her guilty plea. (R. 029). The basis for the request was because the police report was full of lies and she believed that Adult Parole and Probation (“AP&P”) was part of the State and shouldn’t be allowed to make a recommendation where the State had agreed to remain silent. (R. 029).

On March 15, 2007, the Defendant appeared for sentencing. The Court denied her motion to withdraw the guilty plea and sentenced her to one year and ninety days in jail to be run concurrent with each other. (R. 56/3). The Defendant filed a notice of appeal on March 30, 2007. (R. 048)

STATEMENT OF THE FACTS

The Defendant was originally charged in an information filed October 25, 2006, with the offense of Possession of a Controlled Substance within 1000 feet of a Drug Free Zone, a class A misdemeanor in violation of U.C.A. §58-37-8(2), and False Personal Information to a Police Officer, a class C misdemeanor in

violation of U.C.A. §76-8-507 (R. 01-2). Defense counsel worked out a plea negotiation wherein the “State” would remain silent at sentencing. (R. 056/2) The Defendant thereafter requested the court to allow her to withdraw her guilty plea on the basis that she did not believe that AP&P should be allowed to make a recommendation when the “State” had agreed to remain silent. The Defendant apparently understood the word “State” to include all employees of the executive branch of the State of Utah including the prosecution as well as the police. The Defendant therefore claims her plea was not voluntarily or knowingly made.

SUMMARY OF ARGUMENTS

The sole issue on appeal is whether the Defendant knew, understood, and comprehended her rights when she entered her guilty plea. At the time that the Defendant entered her plea, she was under the impression that the state would remain silent at sentencing, and that the term “state” included all governmental entities, including the police. Although the trial court went through a complete Rule 11 colloquy, the Court failed to mention that the Judge is not bound by sentence recommendation and the term “State” only referred to the State Prosecutor. Because of this, the Defendant at that time could not understand the full terms of the plea negotiation. Only after reading through the pre-sentence report did the Defendant feel her guilty plea was entered into unknowingly and

mistakenly. The court did not inquire into the Defendant's ability to know and understand the Rule 11 recitation of right, and therefore the court failed to meet the requirement that the court insure that the Defendant knew and understood these rights. The court's subsequent denial of the Defendant's motion to withdraw her plea was therefore an abuse of discretion.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO WITHDRAW HER GUILTY PLEA

The Court in the case of *State v. Blair*, 868 P.2d 802, 805 (Utah 1993) held that the appellate court reviews "a trial court's denial of a motion to withdraw a guilty plea under an abuse-of-discretion standard." The Court has further noted that it applies "the clearly erroneous standard for the trial court's findings of fact made in conjunction with that decision." *State v. Benvenuto*, 983 P.2d 556, 558 (Utah 1999) "However, the ultimate question of whether the trial court strictly complied with constitutional and procedural requirements for entry of a guilty plea is a question of law that is reviewed for correctness." *State v. Benvenuto*, 983 P.2d 556, 558 (Utah 1999) (See also *State v. Thurman*, 911 P.2d 371, 372 (Utah 1996))

The trial court, therefore, must ensure that the Defendant's plea has strictly met all the requirements of Rule 11, as well as meeting all constitutional requirements. Any failure in the process requires the granting of a subsequent motion by the Defendant to withdraw her plea. A trial court abuses its discretion by failing to grant the motion to withdraw the plea when a Rule 11 violation is present. In *State v. Mora*, 2003 UT App 117, ¶ 23 this Court held:

We hold the trial court exceeded its discretion by denying Mora's motion to withdraw his guilty plea. The trial court that accepted the plea failed to strictly comply with Rule 11 when it accepted Mora's guilty plea without correctly incorporating the affidavit into the record or establishing elsewhere on the record that Mora knew the State was required to prove him guilty beyond a reasonable doubt.

The issue before the Court is whether the Defendant knowingly and voluntarily entered her plea. Rule 11 requires that the defendant enter that plea voluntarily and that the defendant know and understand each of the rights listed in Rule 11(e). Although the trial court made the finding that the Defendant voluntarily entered into the guilty plea, the court failed to explain to the Defendant that the term "state" did not include all executive branch agencies.

The proper reviewing factors, pursuant to case law cited above, is whether the trial court "strictly complied with Rule 11." This strict compliance would include making a determination as to whether or not the Defendant knew and understood all of the rights described to her in the plea colloquy.

For a plea to be voluntarily and knowingly made, a “defendant must understand the nature and value of any promise made to him.” *State v. Copeland*, 765 P.2d 1266, 1274 (Utah 1988). If a defendant pleads guilty based on “an exaggerated belief in the benefits of his plea ... he should be allowed to withdraw his plea.” *State v. Norris*, 2002 UT App 305, ¶ 10, 57 P.3d 238 (quoting *Copeland*, 765 P.2d at 1275). Pleas based on illusory or misleading promises generally will not be considered voluntary. *See Copeland*, 765 P.2d at 1275.

The Defendant, in the present case, did not fully understand the value (or lack thereof) of the plea agreement until she had read the pre-sentence report. The Defendant had an exaggerated belief in the benefits of her plea bargain. Those benefits were that the state would remain silent at sentencing. The Defendant was unaware that the “state” referred only to the State Prosecutor, and mistakenly believed that the “state” referred to all state agencies. Because Defendant’s guilty plea was based on an exaggerated belief in the benefits of her plea she should be allowed to withdraw her plea.

In the present case, the Defendant was under the impression that the term “state” referred to all state employees. It is clearly understandable for an individual to mistake the term “state” as including all executive agencies, including State Prosecutors, Adult Probation and Parole and the Police

Department. Failure to inform the Defendant of this substantial fact led to a misunderstanding of the plea agreement and thus to an involuntary plea.

The United States Supreme Court has indicated that, “when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *Santobello v. New York*, 404 U.S. 257 (1971).

The Defendant is cognizant of this Court’s holding in *State v. Thurston*, 781 P.2d 1296 (Utah Ct. App. 1989). While the holding may appear on its face to be controlling in this case, Defendant would assert that the issue in this case is a different issue altogether. In *Thurston*, the prosecutor agreed to recommend probation rather than incarceration. AP&P was directed to prepare a pre-sentence report. The pre-sentence report included the investigating police officer’s recommendation that the defendant should be sent to the Utah State Prison and the statement that “15 years is not long enough.” *Id.* at 1298.

This Court held that a prosecutor’s agreement does not bind all state agencies. “We also find that sound public policy requires a plea agreement reached by a prosecutor not to be binding on other state agencies. The entire sentencing process is a search for truth and an evaluation of alternatives.” *Id.* at 1300.

The issue in this particular appeal is not whether the State breached its agreement when AP&P made sentencing recommendations to the trial court. The issue is whether Defendant's plea was voluntarily made when she believed that the agreement bound all state agencies from making recommendations including AP&P.

The entry of a guilty plea involves the waiver of several important constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront witnesses. Because the entry of such a plea constitutes such a waiver, and because the prosecution will generally be unable to show that it will suffer any significant prejudice if the plea is withdrawn, a presentence motion to withdraw a guilty plea should, in general, be liberally granted. *State v. Gallegos*, 738 P.2d 1040 (Utah 1987)

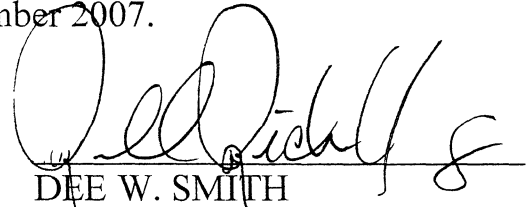
In the case at bar, the Defendant timely filed a motion to withdraw her plea. The Defendant unknowingly entered into the terms of the plea negotiation the day the plea was entered. The Defendant did not understand what was meant by the state remaining silent. As soon as the Defendant became aware that the term "state" only included the State Prosecutor, the Defendant filed a motion to withdraw her plea of guilty. Because the prosecution would not suffer any

significant prejudice by the withdrawal of the Defendant's guilty plea, this court should allow the Defendant to withdraw her plea.

CONCLUSION

The Defendant did not understand what it meant for the State to remain silent at sentencing. Based on this misunderstanding, Defendant had an exaggerated belief in the plea bargain and the plea was not voluntarily entered. Based on this, the Defendant respectfully requests this court reverse the trial court's denial of her motion to withdraw her plea, and remand for further proceedings.

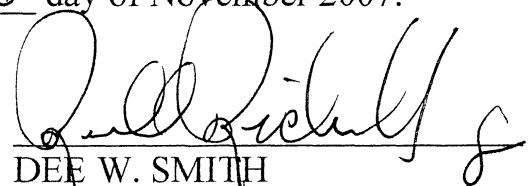
DATED this 26 day of November 2007.



DEE W. SMITH
Attorney for Appellant

CERTIFICATE OF MAILING

I certify that I mailed two copies of the foregoing Brief of Appellant to Weber County Attorney's Office, 2380 Washington Boulevard, Second Floor, Ogden, Utah 84401, postage prepaid this 26 day of November 2007.



DEE W. SMITH
Attorney at Law

ADDENDUM A

2007 MAR 19 PM 2:03

SECOND DISTRICT COURT - OGDEN
WEBER COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	APP SENTENCING
	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 061904033 MO
	:	
CINDY WILLIAMS,	:	Judge: PARLEY R BALDWIN
Defendant.	:	Date: March 15, 2007

PRESENT

Clerk: debbieg

MAR 19 2007

Prosecutor: DECARIA, MARK R

Defendant

Defendant's Attorney(s): MICHAEL BOUWHUIS, PDA

DEFENDANT INFORMATION

Date of birth: July 5, 1957

Video

Tape Number: PRB031507 Tape Count: 10:36-10:39

CHARGES

1. POSSESSION OF A CONTROLLED SUBSTANCE - Class A Misdemeanor
Plea: Guilty - Disposition: 11/16/2006 Guilty
2. FALSE PERSONAL INFORMATION TO PO - Class C Misdemeanor
Plea: Guilty - Disposition: 11/16/2006 Guilty

HEARING

This is time set for sentencing. Defendant is present in custody and is represented by Michael Bouwhuis, public defender. Court denies the motion to withdraw the plea of guilty. Court proceeds with sentencing.

Sentence, Judgment, Commitment



CD19521167
061904033 WILLIAMS,CINDY

Case No: 061904033
Date: Mar 15, 2007

SENTENCE JAIL


Based on the defendant's conviction of POSSESSION OF A CONTROLLED SUBSTANCE a Class A Misdemeanor, the defendant is sentenced to a term of 365 day(s)

Based on the defendant's conviction of FALSE PERSONAL INFORMATION TO PO a Class C Misdemeanor, the defendant is sentenced to a term of 90 day(s)

SENTENCE JAIL SERVICE NOTE

The Court gives credit from today's date and allows the jail time to run concurrent with each other.

Dated this 19 day of March, 2007.



PARLEY R BALDWIN
District Court Judge

ADDENDUM B

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IN THE SECOND DISTRICT COURT OF WEBER COUNTY
STATE OF UTAH

2007 APR -4 PM 3:54

APR 6 2007

STATE OF UTAH,)
)
Plaintiff,)
) VIDEO TRANSCRIPT
vs.)
) CASE NO. 061904033
CINDY WILLIAMS,)
)
Defendant.)

SENTENCING

MARCH 15, 2007

JUDGE PARLEY R. BALDWIN

APPEARANCES:

FOR THE STATE: MR. MARK R. DECARIA
FOR THE DEFENDANT: MR. MICHAEL BOUWHUIS

FILED
UTAH APPELLATE COURTS
SEP 16 2007

ORIGINAL

20070286-CA

P R O C E E D I N G S

THE CLERK: State of Utah versus Cindy Williams,
061904033. This is time set for sentencing on page 1.

MR. BOUWHUIS: Cindy.

THE COURT: Ms. Williams is present. This is the
time set for sentencing. The Court has also received a
motion to withdraw the plea of guilty. I have had a chance
to review that.

Mr. Bouwhuis?

MR. BOUWHUIS: I would submit it based on the motion
that was filed.

THE COURT: Thank you. The motion is denied. The
Court has had a chance to review, and I'm denying the motion
to withdraw.

Mr. DeCaria, do you want to be heard on the sentencing?

MR. DECARIA: Let me just look here. No, Your
Honor. We agreed to remain silent on sentencing.

THE COURT: Thank you.

Mr. Bouwhuis?

MR. BOUWHUIS: Your Honor, I reviewed the report
with her. She indicates that she -- she is obviously in Salt
Lake County Jail for that -- her case there has got her going
to the drug court, but this case would stand in the way of
doing that. She has a drug problem. We would like to get
that treatment through the drug court, and so she would like

1 to be able to do that.

2 She indicates to me, and I -- I looked in the report
3 here, and under the section that normally lists her custody
4 status and time served, they -- I'm not sure what this is.
5 This talks about some other issues but doesn't indicate how
6 much time she spent. She tells me she spent 10 weeks in jail
7 on this particular charge.

8 And so what she's asking the Court to consider doing is
9 giving -- giving her credit for the time that she's done.
10 She would like to be then released to go do the drug court in
11 Salt Lake City, and of course on probation impose any other
12 conditions the Court feels would be appropriate in her case.

13 **THE COURT:** Thank you, Mr. Bouwhuis. I've had a
14 chance to review this and the letters, and I'm not willing to
15 do that.

16 Ms. William, it's the sentence of the Court that you
17 spend one year in jail on count one of the information, 90
18 days on count two. Those times may run concurrent. You'll
19 be given credit for the time that you've been in the Weber
20 County Jail. That concludes this case.

21 (End of proceedings.)
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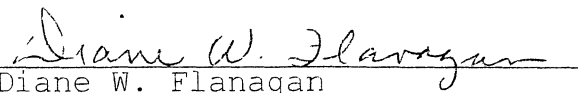
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STATE OF UTAH)
COUNTY OF WEBER)

I, DIANE W. FLANAGAN, RPR, Official Court Reporter
in and for the State of Utah, do hereby certify that the
foregoing is a true and correct transcription from the
videotape recording of the proceedings in the above-entitled
matter.

I FURTHER CERTIFY that I am not a relative or
employee or attorney or counsel of any of the parties, nor a
relative or employee of such attorney or counsel, or
financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal of office at Ogden, Utah, this 4th day of April, 2007.


Diane W. Flanagan
Official Court Reporter